IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

D.R. Sharma **Vs.** 1. The Union of India
2. The Station Director, Radio Kashmir
3. The Superintending Engineer, AIR, Akashvani, Jodhpur.

D.B. CIVIL WRIT PETITION NO.98/2005
under Article 226 of the Constitution of India.

Date of judgment : 12th September, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. R.S. Shekhawat for the appellant.
Mr. Vivek Shrimali for Mr. Ravi Bhansali for the respondents.

BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Heard learned counsel for the parties.

This petition is directed against the order of the Central Administrative Tribunal dated 8.12.2004 rejecting the Original Application No.38/2004 filed by

the petitioner raising grievance against the deduction made from his salary vide order dated 18th December, 2003.

The petitioner was appointed on the post of Engineering Assistant in December 1984 in the department of Information and Broadcasting, Government of India and he was attached with the All India Radio (Akashwani). He had been promoted as a Senior Engineering Assistant in January 1991. At the relevant time, the petitioner was posted at All India Radio, Srinagar, Headquarter at Jammu in 1998-99. The petitioner had availed leave encashment for block year 1998-99 and availed the LTC. He was sanctioned and drawn advance amount of Rs.20,000/- for availing L.T.C.. According to the petitioner, he had left for the trip on 26.11.1999 and returned on 6.12.1999 and had submitted the LTC claim complete in all respect to the AC on 10th January, 2000. Likewise, in the month of June 1998, the petitioner for his official tour to New Delhi had availed the withdrawal of an advance of Rs.2,000/- and according to the petitioner, the same

has already been settled during the same year.

However, be that as it may, the petitioner was transferred from the said place of posting from Srinagar, Headquarter Jammu to All India Radio, Jodhpur on 30.7.2000. As a result of transfer, the petitioner also received his last pay certificate for the purpose of drawing his emoluments at the new place of posting dated 1.9.2000. In the said last pay certificate in column related to details of recovery, it was stated that advance amount of Rs.20,000/- not adjusted so far still outstanding and he has availed advance travelling allowance for examination purpose amounting to Rs.2000/- on 8.6.2000 with the remark "not adjusted still outstanding so far".

Apart from another above two items in question sum of Rs.32,000/- was also there which has been repaid and is not the subject of present lis.

On receipt of aforesaid LPC dated 1.9.2000, the petitioner wrote to the Superintending Engineer, AIR,

Jodhpur stating that he was sanctioned an advance for Rs.20,000/- for availing LTC for the block year 1998-99 for visiting anywhere in India. He visited Kanyakumari and when came back he submitted the LTC claim complete in all respect to AC on 10.1.2000. He further stated that he was relieved on 30th January, 2000 when he was transferred to Jodhpur. On enquiry about the settlement of LTC advance, the said AO, Shri D.N. Bhatt assured him that his advance has already been settled and balance amount is to be recovered at next station i.e. AIR Jodhpur, if outstanding. Since he has not been intimated, he assumes that no outstanding is there against him. Similarly he explained about the advance of Rs.2,000/- as travelling allowance for examination purpose stating that he was sent to official tour in the month of June, 1998 for that purpose an advance of Rs.2,000/- was sanctioned and consequently the bill was settled in the same year. Such belated information about the unsettled advance is not understood by the incumbent. The petitioner also produced the communication from the Administrative Officer, Jodhpur to Station Engineering, Radio Kasmir, Srinagar,

Headquarter Jammu forwarding application of Shri D.R. Sharma, the petitioner, regarding settlement of L.T.C. and the tour advances in spite of issue shown as settled, he was asked to clarify the matter at the earliest. This letter is dated 7.11.2000.

Another communication was addressed by the Station Director, Jodhpur to the Station Director, Radio Kashmir, Jammu vide communication dated 23.2.2001 stating that as per the representation of the petitioner he had drawn LTC for tour anywhere in India and not for home LTC as mentioned in letter from Station Director, Radio Kashmir, Jammu. This letter also refers to the submission of bill to Shri D.N. Bhatt as stated by the petitioner. It was also specifically asked in this letter that if there is no record of such submission of bill by the incumbent, the same should have been recovered at Jammu itself which has not been done. Therefore, it was assumed by the incumbent that the bill has been settled. Likewise, the query was raised about the TA advance of Rs.2000/- in the light of petitioner's submission referred to above by us.

Thereafter from the petitioner's salary for August 2001, a sum of Rs.2000/- was deducted without any prior notice to the petitioner to which he protested on 11th September, 2001 and asked for the refund. He also requested in the said letter that deduction has been made without any pre intimation and without any valid reason for the same. In future if any deduction is to be made, he may be intimated so that he can make efforts to represent his case.

The petitioner has also placed on record the letter addressed by him on 10th September, 2002 to the Station Director, Radio, Kashmir reiterating that the bill of LTC was submitted by him to Headquarters of Radio Kashmir, Jammu to Shri D.N. Bhat on 10th January, 2000. He also stated that neither he was intimated of non-submission of the bill after the stipulated period and nor it has been reflected in the LPC on transfer to Jodhpur, no receipt was given for any bill or representation which is normal practice in all Stations.

With this premise, he submitted that after availing LTC, it is highly probable that the LTC bill submitted by him either has been misplaced or lost by the officer, therefore, he submitted the duplicate bill through proper channel for settlement of the bill. This was sent through the Superintending Engineer, AIR, Jodhpur. In stead of responding to the petitioner's request or considering his representations, the Administrative Officer acting for Station Director made an order on 2.12.2003 which reads as under:-

PRASAR BHARTI
BROADCASTING CORPORATION OF INDIA
RADIO KASHMIR: JAMMU
****

REGISTERED

NO.JMU-8(2)2002/5/3486 DT.2-12-2003

The Station Director
All India Radio
Jodhpur.

Sub:-Unadjusted TA/LTC advance in respect of Shri D.R. Sharma
formerly SEA at Radio Kashmir, Srinagar (HQ Jammu).

Sir,

Kindly refer to this office letter's of even No dt.27.6.2001 sent under registered post that TA advance of Rs.2000/- is still lying outstanding agaisnt

Shri D.R. Sharma, formerly SEA, Radio Kashmir, Srinagar (HC Jammu) presently working SEA in your station. Since the amount is still outstanding against him in our records and audit is pressing requested to recover the TA advance of Rs.2000/- under intimation to this office.

Apart from above Shri D.R. Shar,a formerly SEA had drawn LTC advance of Rs.20,000/- (on 10/99) which is also remained unsettled before his departure from Jammu for his posting to AIR, Jodhpur. The same may also be recovered from him with penal interest under intimation to this office as already intimated to you vide this office letter of even No.dt.27.6.2001 referred above.

Yours faithfully.

sd-
(HEM SINGH)
Administrative Officer
(for Station Director)

Encl: As above.

In pursuance of this, the Administrative Officer, Akashvani, Jodhpur passed the order for recovery of Rs.20,000/- in addition to Rs.2,000/- already deducted from the salary as noticed above.

This led to filing of the Original Application before the Tribunal. The same has been rejected by holding that since there is no document to show that applicant utilised the advance drawn by him for the purpose, no fault can be found with the action of the respondents for making the recovery.

Suffice it to say that nothing has been placed on record by the respondents in addition to what has been placed by the petitioner before the Tribunal. It is apparent that soon after receipt of the LPC under which it was noticed that the aforesaid amount in question remained unsettled, the petitioner had consistently represented before the respondents that he had submitted the details of journey under taken by him and expenses incurred by him for LTC as well as for going on official duty for utilising advance money drawn by him and since he has not received any intimation from the respondents about any outstanding amount until the issue of LPC, he had assumed that amount has been settled. He has also referred to not intimating about outstanding or non-receipt of submission of the amount within the prescribed period under the Rules. Apparently it is not a case of any recovery being effected on some apparent mistake where money has been paid in excess. It is a clear case that the respondents were acting under the pressure of audit department. On the pressure of audit objection while the petitioner has

explained the position to the respondent without holding any enquiry into the correctness or otherwise of the explanation and representation submitted by the petitioner deducted the amount from his salary. It was not open for the respondents to have made any recovery against the petitioner in reference to the alleged unsettled amount. The petitioner has very specifically taken the stand and the date on which the details of utilizing LTC advance had been placed to particular officer at Jammu. As well as about his official visit to New Delhi in 1998 in connection with Departmental examination against which he has withdrawn travelling allowances of Rs.2000/- and claim has been submitted and he had not received any intimation about any due remaining outstanding within prescribed period as per Rules.

There was no material on the basis of which the Tribunal could assume, without holding any enquiry that the petitioner had not proved that he has actually undertaken the concerned journeys. It was not even the case put forward by the respondents in the

communication that the petitioner has not really undertaken the journey for which advance was taken. The only communication was that he has not submitted the account but at no stage, the petitioner was informed that he has withdrawn the amount but has not undertaken the journey. The Tribunal in our opinion travelled in realm of surmises and conjectures. So much so notwithstanding it was an admitted case that Rs.2000/- drawn by the petitioner as TA advance for departmental examination has been recovered from the salary of the petitioner, the Tribunal has went on to doubt whether said amount was actually been recovered. This goes to show that the impugned order of the Tribunal has been passed without noticing the material which was placed before it, by assuming that since the audit objection has been raised, the petitioner must not have accounted for the amount.

This approach, in our opinion, is most injudicious one. The principle is well settled that any recovery from the incumbent from his salary cannot be made unless an opportunity of hearing is given to him to

explain his part. In this case, notwithstanding the fact that LPC discloses the amount as unsettled and the petitioner had responded to it well in time, the respondents did not hold any enquiry into the issue and acted under the pressure of audit objection for effecting recovery of the said amount. It is apparent from the record that notwithstanding the petitioner's representation was forwarded to Jammu Headquarters for the purpose of its verification, nothing has been brought on record that what was the response from the Radio Kashmir, Jammu nor any participatory enquiry was held after receipt of any explanation from the place of last posting where the amount has been drawn. No denial has been made that the petitioner was not intimated within the stipulated time about non-submission of the account. In these circumstances, in our opinion, the recovery of the amount from the petitioner cannot be sustained as it is clearly in violation of the principles of natural justice.

Accordingly, the impugned order of the Tribunal dated 8.12.2004 (Annex.11) as well as the

impugned order dated 18.12.2003 (Annex.10) are quashed. However, it will not preclude the respondents from holding appropriate inquiry into the matter and pass a fresh order in accordance with law.

[SANGEET LODHA], J. [RAJESH BALIA], J.

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